

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JOAN A. DUBE

)

)

VS.

)

W.C.C. 01-05719

)

CITY OF CRANSTON

)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division upon the respondent/employer's claim of appeal from a decision by the trial judge granting the employee's Original Petition and awarding the payment of weekly benefits for partial incapacity from August 9, 2001 and continuing for left and right shoulder injuries. Based upon actions taken by the employer subsequent to this appeal, we find that the employer's appeal is moot and the appeal must be dismissed.

The employee alleged in her Original Petition that she sustained injuries to her left and right shoulders when she tripped and fell at work on November 27, 2000. As a result of these injuries, she asserted that she was disabled from November 28, 2000 to December 2, 2000 and from March 5, 2001 and continuing. At the pretrial conference, the petition was granted in part. The judge found that the employee sustained contusions to both knees and a left shoulder strain. He awarded weekly benefits for partial incapacity from

November 27, 2000 to December 2, 2000 and from March 5, 2001 to March 8, 2001. The employee claimed a trial.

As noted by the trial judge, the evidence clearly established that the employee fell at work on November 27, 2000 and that she sustained a left rotator cuff tear as a result of that fall. The left shoulder problem resolved with conservative treatment. Neither party has contested those conclusions. The primary issues presented to the trial judge were whether the employee also injured her right shoulder, as a result of the fall at work, and whether she was disabled as a result of that injury. The matter was complicated by the fact that the employee slipped and fell at home in late March 2001, and there were conflicting accounts of how she fell.

Relying upon the testimony of the treating physician, Dr. John A. Froehlich, the trial judge concluded that the employee did sustain a right rotator cuff tear (in addition to the left rotator cuff tear), as a result of the fall at work on November 27, 2000, and that she was disabled as a result of the right shoulder problem from August 9, 2001 and continuing.

The employer claimed an appeal from the trial decision and decree. In its ten (10) reasons of appeal, the employer contests the finding that the employee sustained a right shoulder injury as a result of the fall at work and therefore disputes that the resulting disability is work related.

The appellate panel heard oral arguments on December 4, 2002. During the course of argument, counsel for the employee advised the panel that the

employer had filed a Mutual Agreement acknowledging that the employee's incapacity had increased from partial to total for a period of time following surgery to her right shoulder. The employee had also raised this issue in her memorandum to the court. As a result of this representation, and pursuant to R.I.G.L. § 28-35-28(a), the matter was remanded to the trial judge for the purpose of reopening the matter to admit the Mutual Agreement into evidence so that its effect on the instant appeal could be considered by the Appellate Division.

Pursuant to the order of remand, a Mutual Agreement, signed by the employee and a representative of the employer in September 2002, was marked as an exhibit. The matter was then returned to the Appellate Division for further consideration.

The Mutual Agreement states that the employee's weekly benefits are modified from partial incapacity to total incapacity beginning June 12, 2002, (apparently the date of surgery on the right shoulder), and are modified again from total incapacity to partial incapacity as of July 18, 2002. Section 28-35-6(b) of the Rhode Island General Laws provides that such an agreement signed by the parties has the force and effect of a decree. The Mutual Agreement, therefore, represents an agreement by the employer to pay weekly benefits for the periods stated in the document.

As noted above, the employer on appeal is contesting the trial judge's finding that the employee sustained a right shoulder injury. As found by the trial judge, the disability beginning August 9, 2001 is due solely to the right shoulder

problem. By entering into a Mutual Agreement to pay benefits for periods of disability thereafter, the employer has accepted the findings of the trial judge with regard to the right shoulder and rendered this appeal moot. The employer was under no obligation to acknowledge the period of total incapacity following surgery on the right shoulder, particularly, while it was contesting that the right shoulder problem was work related. As a result of the employer's voluntary action in entering into the Mutual Agreement, this appeal must be dismissed as moot.

The employer shall pay a counsel fee in the sum of One Thousand and 00/100 (\$1,000.00) Dollars to John Harnett, Esq., attorney for the employee, for the successful defense of the employer's claim of appeal.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, copy of which is enclosed, shall be entered on

Morin and Bertness, JJ. concur.

ENTER:

Olsson, J.

Morin, J.

Bertness, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the respondent/employer and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

1. The findings of fact and the orders contained in a decree of this Court entered on April 5, 2002 be, and they hereby are, affirmed.

2. The employer shall pay a counsel fee in the sum of One Thousand and 00/100 (\$1,000.00) Dollars to John Harnett, Esq., attorney for the employee, for the successful defense of the employer's claim of appeal.

Entered as the final decree of this Court this day of

BY ORDER:

ENTER:

Olsson, J.

Morin, J.

Bertness, J.

I hereby certify that copies were mailed to John Harnett, Esq., and Robert
Jeffrey, Esq., on
